

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CARIBBEAN PETROLEUM REFINING,
LP,

Plaintiff,

v.

BARGE SAN JUAN, et al.,

Defendants.

Civil No. 06-2129 (JAF)

LOGAN DIVING, INC.,

Defendant and
Third-Party Plaintiff,

v.

CONTROLLED DEMOLITION &
RECYCLING CORP., et al.,

Third-Party Defendants.

ORDER

On November 9, 2006, Plaintiff Caribbean Petroleum Refining, LP ("CPR"), brought this action against Defendants Barge San Juan ("the Barge"), Logan Diving, Inc. ("Logan"), ABC Company, Richard Roe's Marine Company ("Richard Roe's"), St. Paul Travelers/St. Paul Fire & Marine Insurance Co. ("St. Paul's"), ABC Insurance Company, and XYZ Insurance Company, seeking damages resulting from a November 10, 2005, accident during which the Barge tipped, causing a crane to strike CPR's dock. Docket No. 1. On December 21, 2007, Logan filed a

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1 third-party complaint seeking indemnity from Third-Party Defendants
2 Del Valle Group ("Del Valle") and Controlled Demolition and Recycling
3 Corp. ("Controlled Demolition"). Docket No. 20. On April 3, 2008, Del
4 Valle moved to dismiss pursuant to Federal Rule of Civil Procedure
5 12(b)(6), stating that Del Valle and Logan had a contract by which
6 Logan agreed to insure Del Valle for any accidents. Docket No. 34-1.
7 Del Valle attached a certificate of liability insurance purporting to
8 prove that it could not be held liable for any damages caused by
9 Logan. Docket No. 34-2. Logan opposed on April 16, 2008. Docket
10 No. 37.

11 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
12 defendant may move to dismiss an action against him, based solely on
13 the pleadings, for the plaintiff's "failure to state a claim upon
14 which relief can be granted." Fed. R. Civ. P. 12(b)(6). In assessing
15 a motion to dismiss, "[w]e begin by accepting all well-pleaded facts
16 as true, and we draw all reasonable inferences in favor of the
17 [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,
18 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d
19 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff
20 has stated a claim under which relief can be granted. We note that in
21 order to survive a motion to dismiss, a plaintiff must allege facts
22 that demonstrate "a plausible entitlement to relief." Rodríguez-Ortiz
23 v. Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell
24 Atl. Corp. v. Twombly, ___ U.S. ___, 127 S. Ct. 1955, 1967 (2007)).

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1 Under Rule 12(b)(6), we may consider only facts or documents
2 that are incorporated into or attached as exhibits to the complaint.
3 Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321
4 (1st Cir. 2008). If we choose to consider material outside of the
5 pleadings, we must convert the motion to a motion for summary
6 judgment and consider the motion under the standards applicable to
7 Rule 56. Id.

8 Here, by submitting the insurance contract, Del Valle attempts
9 to place before the court matters not incorporated into the third-
10 party complaint. Because the parties have not fully briefed the
11 issues relating to the content and authenticity of the insurance
12 contract, we decline to convert Del Valle's motion into a motion for
13 summary judgment. Del Valle may, of course, raise the same issue in
14 a motion for summary judgment.

15 Accordingly, we hereby **DENY** Del Valle's motion to dismiss,
16 Docket No. 34.

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 18th day of December, 2008.

19 s/José Antonio Fusté
20 JOSE ANTONIO FUSTE
21 Chief U.S. District Judge